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Paper No. 29

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MAY 14 2004

In re Application of

Van Hook, et al.

Application No. 09/662,832

Filed: September 15, 2000

Atty. Dkt. No.: 1778.01Q0002

For: ALIGNMENT AND ORDERING OF
VECTOR ELEMENTS FOR SINGLE

INSTRUCTION MULTIPLE DATA

PROCESSING

OFFICE OF PETITIONS

: DECISION REFUSING STATUS

: UNDER 37 CFR 1.47(a)

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This decision is in response to the petition under 37 CFR 1.47(b), filed April 22, 2004. This petition is being treated under 37 CFR 1.47(a).

The petition under 37 CFR 1.47(a) is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor.. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed September 15, 2000 without a properly executed oath or declaration.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

The instant petition lacks items (1), (2), and (3) set forth above.

As to item (1), petitioner has failed to establish that the inventors cannot be reached or refused to sign the oath or declaration after having been presented with the application papers (specification, claims, drawings, and oath or declaration).

Petitioner has provided no evidence that the non-signing inventor received a complete copy of the application papers (**specification, claims, drawings, and oath or declaration**) and thereafter refused to execute the oath or declaration. The statement of facts given by James P. Hao relates to U.S. Application No. 08/947,649 (now U.S. Patent No. 5,933,650). There is no indication in Office records that Rule 47 status was accorded in U.S. Application No. 08/947,649.

Accordingly, petitioner is required to establish that the application papers (specification, including claims, drawings, and oath or declaration) for the instant application were sent to the non-signing inventor and that the non-signing inventor thereafter refused requests to execute the oath or declaration.

Petitioner is reminded that before a refusal to sign an oath or declaration can be alleged, it must be demonstrated that a *bona fide* effort has been made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to each non-signing inventor. Petitioner has failed to establish that the non-signing inventors received a copy of the application papers (specification, claims, drawings, and oath or declaration) and thereafter refused to execute the oath or declaration.

Any renewed petition should be accompanied by evidence to establish that the non-signing inventor was sent a complete copy of the application papers (specification, claims, drawings, and oath or declaration) and thereafter refused to execute the declaration. Petitioner may wish to provide the Office copies of letters sent to the inventors indicating the enclosure of the application papers (specification, claims, drawings, and oath or declaration). If after the inventors receive the application papers and requests to execute the oath or declaration are refused, these facts should be set forth in a statement of facts signed by the person to whom the refusals were made and detailing with specificity the exact manner of the refusals. If

a written refusal has been made, a copy of the written refusal should be included on renewed petition.

As to item (2), an acceptable oath or declaration for the above-identified application in compliance with 37 CFR 1.63 has not been submitted. The declaration does not refer to the instant application by application number and filing date. Further, the declaration presented with the instant petition is unacceptable because it has been improperly executed. Where it is alleged in a petition under 37 CFR 1.47(a) that an inventor refuses to execute an oath or declaration, the remaining inventors should sign the declaration in their own name and on behalf of the non-signing inventor. A declaration must be submitted in which the available inventors sign on their own behalf and the signature block of the non-signing inventor is simply left blank. The attorney of record may not sign on behalf of the non-signing inventor where a petition under 37 CFR 1.47(a) is filed. See, MPEP 409.03(a). Petitioner is advised that any renewed petition should include a properly executed oath or declaration.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile: (703) 872-9306

By hand: U.S. U.S. Patent and Trademark Office
2011 South Clark Place
Customer Window, Mail Stop Petition
Crystal Plaza Two, Lobby, Room 1B03
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Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-0310.


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